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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/770,520	01/25/2001	Nancy Karen Zangle	40186.0001US01	5868

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,520

Applicant(s)

ZANGLE ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

fml

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 2-4 have been cancelled by applicants. Upon further consideration based on applicant's amendment submitted on 3/18/02, the restriction of claims 13-15 in the office action mailed on 12/17/01 have been withdrawn. Therefore, claims 1,5-12,13-19 are pending. The oath/declaration objection in the office action mailed on 12/17/01 has been withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1,5-12,16-19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, line 6-7, it is unclear how just one layer of fabric is to be attached to both the interior and exterior surfaces of the middle portion. Shouldn't there be two layers of fabric, one to cover the interior and one to cover the exterior? The original claims 2-3, which have been cancelled, define as such, i.e. one fabric layer attaching to the interior surface and another fabric layer attaching to the exterior surface.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 1** is rejected under 35 U.S.C. 102(b) as being anticipated by Curley et al. (US 5,564,454). Curley et al. disclose a cat toy comprising a flexible elongated tube 1 capable of being contorted into a multitude of curved position since it is collapsible, the tube having a first end (around the area of ref. 3), a second end (around the area of ref. 4) and a middle portion (the middle of the tube around ref. 2), the tube being made from a crinkly plastic film (col. 5, lines 48-55) molded to a tubular shaped coiled wire scaffolding 7-9, the wire scaffolding having a plurality of loops (col. 5, lines 57-65, Curley discuss that the wire 7-9 are separate items, but together considered one unit of wire scaffolding, which may be made of a single loop, this indicate that they are a plurality of loops as shown in fig. 3). In addition, the tube of Curley et al. is made from a crinkly plastic film such as Markosite styrene (col. 5, lines 48-55) molded to a tubular shaped coiled wire scaffolding. Furthermore, the middle portion of the tube having an interior and exterior surfaces, and a layer of fabric 21,20 attached to both the surfaces (col. 3, lines 40-45). Note, film 21,20 are attached onto film 22 along the whole tube which means that it includes the middle portion.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. **Claims 6,8,10,11,13,14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454).

For claim 6, Curley et al. further disclose the tube having a substantially circular cross section but they are silent about the tube having a diameter from 10 to 20 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the diameter of the tube of Curley et al. from 10 to 20 inches, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art.

For claim 8, Curley et al. disclose the crinkly plastic film is preferred to be Markosite styrene (col. 5, line 54) but they are silent about the film being polyethylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene in place of the Markosite styrene of Curley et al. , since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 10 & 11, Curley et al. are silent about the tube's length being from 24 to 72 inches or 36 to 60 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the length of the tube of Curley et al. from 24 to 72 inches or 36 to 60 inches, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art.

For claim 13, Curley et al. disclose a cat toy with the above mentioned features, the toy comprising the steps of providing a spring coiled members 7-9; molding a crinkly plastic film (col. 5, lines 48-55) to the coiled members to form a flexible elongated tube 1 having an interior passage; attaching a cloth layer 20 to the interior passage (col. 3, lines 40-45). However, Curley et al. are silent about the coiled members 7-9 being steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ steel as the preferred material for the coiled members of Curley et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

For claim 14, Curley et al. further disclose the step of attaching a second cloth layer 21 to an exterior surface of the tube (col. 3, lines 40-45).

8. **Claims 5,15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Johnson (US 5,921,204).

For claim 5, Curley et al. are silent about the tube having at least one air hole. Johnson teaches an expandable tube 8 in which he employs air holes 25a along the tube or at certain section of the tube so as to prevent condensation in the tube and allows entry of fresh air into the tube (col. 3, lines 24-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ at least one air hole as taught by Johnson in the tube of Curley et al. in order to prevent condensation in the tube and to allow entry of fresh air into the tube.

For claim 15, the combination of Curley et al. as modified by Johnson, as explained in the above paragraph, further teach the step of forming at least one air hole 25a (teaching of Johnson) through the tube for prevention of condensation and for allowing fresh air into the tube.

9. **Claims 7,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Westphal (US 5,620,396).

For claim 7, Curley et al. are silent about having a removable cover piece at either the first or second ends of the tube. Westphal teaches a toy tunnel in which he employs a cover (can be seen at refs. A,D,B rolled up) to cover the ends of an elongated tunnel. The cover of Westphal can be rolled up and attached to Velcro if one wishes to not have the cover covering the tunnel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cover as taught by Westphal in the tube of Curley et al. in order to cover either the entrance or exit of the tube. Curley et al. as modified by Westphal's are silent about the cover being removable because the cover at the ends are a part of an integral large sheet of cover. However, it is notoriously well know that covers at entrances or exits can be made to be removable in a shelter or tunnel structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover of Curly et al. as modified by Westphal be removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Newin vs. Erlicnman, 168, USPQ 177,179.

For claim 17, Curley et al. are silent about a portion of the fabric layer attached to the exterior of the middle portion extends beyond the first and second ends of the tube to form a fabric flap entrance. Westphal teaches a toy tunnel as mentioned above. The flaps A,B,D of Westphal provide fabric flap entrances, each flap is a part or portion of a continuous sheet of fabric that extends from end to end of the tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fabric flap entrance as taught by Westphal at ends of the toy of Curley et al. so as to provide an entrance/exit door for the animal. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ extra material in the fabric layer covering the tube of Curley et al. as modified by Westphal and extending the extra material fabric layer beyond the ends of the tube to create fabric flap entrance as that taught by Westphal so as to provide an entrance/exit door for the animal that saves labor and time because the user would not have to cut separate fabric portion to make the door.

10. **Claims 9,16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Zoroufy (US 5,351,646).

For claim 9, Curley et al. are silent about catnip being suspended from an interior surface of the middle portion. Zoroufy teaches an animal hair collecting device, that can also be a cat toy, where Zoroufy employs catnip in the cat toy 90 suspended from the interior of the device to further entice the animal in the device (col. 13, lines 40-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ catnip as taught by Zoroufy suspended from the interior surface of

the tube of Curley et al. in order to further entice an animal in the toy. Curley et al. as modified by Zoroufy are silent about the location of the catnip, i.e. being placed in the middle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the catnip of Curley et al. as modified by Zoroufy anywhere along the interior surface of the tube depending on the user's preference.

For claim 16, Curley et al. are silent about a fabric mat entrance form from a portion of the fabric layer attached to the interior of the middle portion of the tube. In addition to the above, Zoroufy teaches in fig. 4A a fabric mat entrance 57 form from a portion of a fabric layer covering a housing or frame 22 of the device so as to provide the animal with a rubbing edge (col. 7, lines 65-68 and col. 8, lines 1-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fabric mat entrance as taught by Zoroufy at ends of the toy of Curley et al. so as to provide a rubbing edge for the animal. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ extra material in the fabric layer covering the tube of Curley et al. as modified by Zoroufy and extending the extra material fabric layer beyond the ends of the tube to create fabric mat entrance as that taught by Zoroufy so as to provide a rubbing edge for the animal that saves labor and time because the user would not have to cut separate fabric portion to make the mat.

11. **Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Zheng (US 5,618,246). Curley et al. are silent about the coiled wire scaffolding 7-9 being a spring-steel coiled wire. Zheng teaches a play tunnel

in which Zheng employs spring steel coiled wire 22 to support the tunnel and to allow the tunnel to be versatile (col. 4, lines 39-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a spring-steel coiled wire as taught by Zheng in place of the elastic member 7-9 of Curley et al. in order to support the tube and to allow the tube to be more versatile.

12. **Claims 7,18,19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Maggio (US 4,979,242).

For claims 7 & 19, Curley et al. are silent about a removable cover piece covering either first or second ends of the tube. Maggio teaches a collapsible room shelter that can be a cat toy comprising a flexible tube 2 having first and second ends, the first end is covered by a removable cylindrically cup shaped cover piece 13 so as to be stored in the case 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable cover piece and the case as taught by Maggio at one end of the collapsible toy structure of Curley et al. in order to store the toy.

For claim 18, Curley et al. are silent about first and second protective edge coverings encasing the ends of the tube. Maggio teaches a collapsible room shelter that can be a cat toy comprising a flexible tube 2 having first and second ends, the first end is covered by a removable cylindrically cup shaped cover piece 13 and the second end is covered by a casing 3 for storage purpose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable cover piece and the case as taught by Maggio at one end of the collapsible

toy structure of Curley et al. in order to store the toy so as to prevent the tube from being frayed or tore.

Response to Arguments

13. Applicant's arguments filed 3/18/02 have been fully considered but they are not persuasive.

Applicants argue that Curley does not teach a flexible elongated tube capable of being contorted into a multitude of curved positions or a flexible elongated tube having a coiled wire scaffolding with a plurality of loops. Further, Curley does not teach a crinkly plastic film molded over the coiled wire scaffolding. Clearly Curley et al. teach a flexible tube that is capable of being contorted from its erected state to collapsible state.

Collapsibility allows the tube to be contorted at least one curved positions. In addition, applicants state "multitude" which simply means at least more than one, which clearly the device of Curley et al. can performed. Again, Curley et al. clearly teach a coiled wire scaffolding with a plurality of loops 7-9. The word scaffolding is just a framework or platform which supports something (from the Microsoft Bookshelf Basic Dictionary), so Curley's elastic members 7-9 are a framework supporting the material 20-22. As for the members 7-9 being wire or not, the definition of a wire (again, from the dictionary as mentioned in the above) is something resembling a wire, as in slenderness or stiffness so it doesn't necessary have to be made out of metal. The members 7-9 of Curley et al. do resemble a wire for a framework. For the crinkly material, Curley et al. clearly teach in col. 5, lines 49-50, a crinkly plastic film (such as Markosite styrene) molded over the scaffolding 7-9. Molded just means to fit closely by following the contours of (again,

from the same dictionary), which Curley's crinkly film 20-22 fit closely by following the contours of the members 7-9.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 8:30 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. The fax number of the Art Unit is (703)-306-4195. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

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Son T. Nguyen, *STN*
Patent Examiner, GAU 3643
May 13, 2002

A handwritten signature in black ink, appearing to read "Peter M. Poon". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Poon".

PETER M. POON
SUPERVISORY PATENT EXAMINER
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